NO. 80-1340

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

The Honorable RICHARD D. LAMM, Governor, State of Colorado; JAMES G. RICKETTS, etc.; JOHN PERKO, etc,; EDGAR FOX, etc.; WILLIAM WILSON, etc.,

Petitioners,

v.

FIDEL RAMOS; DAVID LEE ANDERSON; SADIKI LISIMBA AJAMU, a/k/a Eugene Collins; ALEXANDER ROSES; MARK J. MENCHETTI; LESTER LASENBY,

Respondents.

BRIEF FOR AMICUS CURIAE THE STATE OF FLORIDA, JOINED AND SUPPORTED BY THE STATE OF HAWAII

TANY S. HONG
ATTORNEY GENERAL

JAMES DANNERBERG
DEPUTY ATTORNEY GENERAL
State Capitol
Honolulu, Hawaii 96813
808/548-4740

JIM SMITH
ATTORNEY GENERAL

MITCHELL D. FRANKS
JAMES A. PETERS
ASSISTANT ATTORNEYS GENERAL
Department of Legal Affairs
The Capitol-Suite 1501
Tallahassee, Florida 32301
904/488-1573

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Respondents.

BRIEF FOR AMICUS CURIAE THE STATE OF FLORIDA JOINED AND SUPPORTED BY THE STATE OF HAWAII

INTEREST OF AMICI

The Attorneys General of the States of Florida and Hawaii, pursuant to Rule 36.4, Rules of the Supreme Court of the

United States, respectfully submit this brief on behalf of the States of Florida and Hawaii as Amicus Curiae, urging that this Petition for Writ of Certiorari be granted.

The State of Florida, as a sovereign maintaining an inmate population in excess of 20,000 in eighty-one state correctional institutions or prisons, and the State of Hawaii, as a state maintaining a growing inmate population, are vitally concerned with the proliferation of often duplicative inmate lawsuits to which their executive and judicial branches are exposed in the state and federal courts. The unnecessary

repetition of such duplicative suits creates an inefficient drain on state and federal judicial and executive resources which is common to many states. Appropriate recognition of judicial abstention will alleviate much of that inefficiency.

The emergence of a federal judicial "degeneration" standard by which a "totality of conditions" in a state prison is to be evaluated, particularly in cases in which abstention is equitably required, will present an ominous catalyst for a new generation of inmate "totality" suits and, at the very least, will precipitate a second standard, which will cloud the adequacy of improvements made under the existing "reasonably

adequate" standard of Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977), cert. den., 438 U.S. 915 (1978).

SUMMARY OF ARGUMENT

Because the Colorado authorities had acknowledged deficiencies at the Colorado penitentiary and had accomplished substantial commitments and improvements to resolve those deficiencies, the district court abused its discretion by failing to abstain from deciding this case. Furthermore, the standard by which the "totality of conditions" at the Colorado penitentiary were evaluated departs from the accepted and evolving standards as determined by past interpretations of the Eighth Amendment.

Because of the economic and social impact of the decisions below on the fifty states which maintain prison populations, this Petition for Writ of Certiorari should be granted.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. ABSTENTION

Abstention under the circumstances of this "totality of conditions" prison suit is appropriate and is consistent with previous rulings of this Court. Although discretionary, such abstention would free the federal judiciary from prolonged involvement in the myriad issues of administering the Colorado state penitentiary--issues concurrently

being addressed by the Colorado State judicial, legislative and executive branches of government--and would perpetuate and foster a more economical and responsible state solution to this state problem.

The unique and multifaceted nature of prison administration has long been recognized by this Court, the relevant holdings of which are echoed only by a disappointing whisper in the courts below. Procunier v. Martinez, 416 U.S. 396 (1974), recognizes the "Herculean obstacles" and the "complex and intractable" problems facing prisons in America, problems which are not "readily susceptible of resolution by decree," problems for which the courts are

"ill-equipped to deal." Similarly, Preiser v. Rodriguez, 411 U.S. 475, 491 (1973), acknowledges the strong considerations of comity that require the federal judiciary to grant the state the first opportunity to correct its errors.

The abstention doctrine, which Petitioners sought to invoke in this cause, is founded in equity. Hostetter v. Idlewild Liquor Corporation, 377 U.S. 324, 352 (1964); Younger v. Harris, 401 U.S. 37, 43 (1971). The equitable maxims, which accompany the doctrine, clamor for abstention in favor of the state petitioner which has, at its own initiative and prior to litigation, undertaken and accomplished substantial and tangible results to alleviate the prison problems at issue in this cause.

When a party seeks to invoke court powers in equity, the party is subject to equitable defenses. British Columbia Investment Company, et al v. Federal Deposit Insurance Corporation, 420 F.Supp. 1217 (S.D. Cal. 1976). The substantial equitable conduct of Petitioners, as summarized at pages 2 and 3 of their Petition for Writ of Certiorari, literally leaps from their pleadings and filings in this cause and from the related court orders.

The function of equity is not to punish, but merely to take action as the Court in its discretion deems necessary to prevent the recurrence of improper conduct. Hartford-Empire Co. v. United States, 323 U.S. 386, 409 (1945); Hecht

Co. v. Bowles, 321 U.S. 321, 329-330 (1944); Swift & Co. v. United States, 276 U.S. 311, 326 (1928). Where voluntary action has been taken in good faith to minimize such recurrence, even though under the pressure of litigation, this is a factor which the Court can and should consider in formulating relief. United States v. Oregon Medical Society, 343 U.S. 326, 334 (1952); Walling v. Youngerman Reynolds Hardwood Co., 325 U.S. 419, 421 (1945). As is conspicuously understated in Footnote 2 of the Petition for Writ of Certiorari filed with this Court, not only were the Colorado executive and legislative branches proceeding expeditiously, but Colorado state courts permitted inmates to file actions in state court pursuant

to 42 U.S.C. §1983 to remedy unconstitutional prison conditions. At the time this cause was heard on Motions to Dismiss and/or Abstain, there were at least two such pending actions concerning the penitentiary, actions in which Respondents Ramos, Anderson, et al., could have intervened. Respondents, in ignoring those existing state court actions, have prejudiced the State of Colorado Petitioners and have tainted their own standing to seek equitable aid in the federal forum.[1] See, e.g.,

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[1] Certainly the time, effort, and expenses, including attorney fees, would be better spent on those programs already voluntarily undertaken to correct recognized problems. The state did not need nor require this diversion of its energies and resources to accomplish these constitutional tasks.

Costello v. United States, 365 U.S. 265, 282 (1961); Lathan v. Brinegar, 506 F.2d 677, 691-92 (9th Cir. 1974).

In Moore v. Sims, 442 U.S. 415 (1979), this Court applied the abstention doctrine to curtail duplicative district court action. In doing so, it allowed a pending state court proceeding to adjudicate federal constitutional questions. It observed that a consideration for such abstention was the needless obstruction to the policy of the states by forestalling state action. The federal courts disrupt the process of state reconciliary action when the courts interject themselves into local disputes. They concurrently prevent the informed evolution of state policy. If equitable

abstention is ignored in such circumstances,

> . . . [t]he price exacted in terms of comity would only be outweighed if state courts were not competent to adjudicate federal constitutional claims--a postulate we have repeatedly and emphatically rejected. (citations omitted) Moore, 442 U.S. at 430.

There was and is no finding that the Colorado state court was not competent to adjudicate the federal constitutional claim which Respondents' inmate class submitted to it in the state action paralleling this federal action.

The policy of the State of Colorado allowed an open forum in state court to resolve cases of the type presented by Respondents. The administration and policy of the State of Colorado allowed

the Petitioners to candidly acknowledge, address, and resolve the deficiencies which Respondents Ramos, et al., put here at issue. The very record by which the Petitioners documented their prison's deficiencies and documented their remedial accomplishments was presented as evidence against them.

This Court has repeatedly held that intervention of a federal court is not necessary for the protection of federal rights and that "few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies." Alabama Public Service Commission v. Southern Railway Co., 341 U.S. 341, 350 (1951). The unsettling of

the delicate balance in the area of federal state relationships has repeatedly been viewed as an appropriate reason for abstention. See concurring opinion of Justice Harlan in Zwickler v. Koota, 389 U.S. 241, 254 (1967); Louisiana Power and Light Co., v. City of Thibodaux, 360 U.S. 25, 33 (1959); Harrison v. NAACP, 360 U.S. 167, (1959). Yet the district court, by failing to abstain, has used the fruit of that good-faith state policy to condemn the state's progress and to further impair and perplex the state's capacity to resolve its prison problem.

Certainly the rationale of Presier and Procunier, supra, when coupled with

the equitable considerations discussed above, suggests that an unsettling of the federal-state relationship and responsibilities was unnecessarily provoked by the district court's refusal to abstain.

B. THE CONSTITUTIONAL STANDARD TO EVALUATE CRUEL AND UNUSUAL CONFINEMENT

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

In its early interpretations, this Court construed that Amendment to prohibit such punishments as burning at the stake, disemboweling, and quartering.

In other decisions, the Amendment has been construed to evaluate the more subtle distinctions of conditions of confinement, e.g., McElvaine v. Brush, 142 U.S. 155 (1891), and Trezza v. Brush, 142 U.S. 160 (1891), rejecting arguments that solitary confinement was, per se, unconstitutional; Weems v. United States, 217 U.S. 349 (1910), prohibiting a sentence of "cadena tempora," and most recently Bell v. Wolfish, 441 U.S. 520 (1979). Indeed, the length of the Court's opinion in Bell and the multiple case citations appearing therein evidence the plethora of inmate lawsuits of the last decade and the need to sanction standards of practical application.

All cases discussing it evidence, implicitly or expressly, the fact that the requirement of the Eighth Amendment guarantee was and is a progressive and evolving one determined by the standards of decency which mark the progress of a maturing society. See, e.g., Trop v. Dulles, 356 U.S. 86 (1958); Rudolph v. Alabama, 375 U.S. 889 (1963); Estelle v. Gamble, 429 U.S. 97, 102 (1976)2/

2/The workable standard provided in Estelle, "deliberate indifference," is far removed from the subjective "degeneration" standard applied below.

Furman v. Georgia, 408 U.S. 238 (1972).3/

As recently as February 4, 1981, Mr. Justice Rehnquist's in-chambers opinion in Atiyeh v. Capps, A-625, 49 L.W. 3558, cited Gregg v. Georgia, 428 U.S. 153, 184 (1976), for the proposition that retribution is a permissible goal of incarceration.

> In short, nobody promised them a rose garden; and I know of nothing in the Eighth Amendment which requires that they be

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3/Furman suggests three criteria for the determination. Punishment may not be so severe as to be degrading to the dignity of human beings, may not be arbitrary, and may not be so severe as to be unacceptable to contemporary society. 408 U.S. 271-274.

> housed in a manner most pleasing to them, or considered even by most knowledgeable penal authorities to be likely to avoid confrontations, psychological depression, and the like. They have been convicted of crime, and there is nothing in the constitution which forbids their being penalized as a result of that conviction.

Even given the "evolving standards" perspective noted above, the Furman, Gregg, and Atiyeh holdings, supra, contrast remarkably and clash with the "degeneration test" applied in the case at bar. The individualized "degeneration" standard requiring that an inmate is entitled to be confined in an environment which does not result in his degeneration or threatens his mental and

physical well being is so subjective,[4] restrictive, and individualized as to preclude virtually all types of punitive sentencing. "The mental, physical and emotional status of individuals, whether in or out of custody, do [sic] deteriorate and there is no power on earth to prevent it." Newman v. Alabama, 559 F.2d 283, 291 (5th Cir. 1972).

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[4]/There exists substantial authority that in evaluating punishments under the Eighth Amendment the court "must make certain that the judicial determination is as objective as possible." Furman v. Georgia, 408 U.S. 238, 277, and note 21 thereon.

The "double bunking" sanctioned in Bell might well throw an inmate accustomed to wide-open spaces into the bowels of depression. The central and common toilet facilities common to virtually all penal institutions could cause most inmates substantial anxiety. A claustrophobic inmate under the "degeneration" standard could not be confined in a walled cell at all. A parent might degenerate if confined away from his or her offspring. Obviously, the legitimization of this standard will play havoc with the emerging "reasonably adequate standard," could encourage unrealistic determinations, and would compound the difficulties of the already complex subject of prison reform.

Review of that standard by this Court, whether to condone or condemn the standard, would timely, expeditiously, and efficiently determine the direction that this evolving standard is to take. The expenditure of virtually hundreds of millions of dollars in the fifty states maintaining prisoner populations would be immediately and beneficially affected by this Court's prompt resolution of the issues presented herein.

> The Cruel and Unusual Punishments Clause, like the other great clauses of the Constitution, is not susceptible of precise definition. Yet we know that the values and ideals it embodies are basic to our scheme of government. And we know also that the Clause imposes upon this Court the duty, when the issue is properly

> presented, to determine the constitutional validity of a challenged punishment, whatever that punishment may be. Concurring opinion of Mr. Justice Brennon in Furman, 360 U.S. at 258.

This issue is properly presented. Certiorari should be granted accordingly.

CONCLUSION

This case presents two issues which should be decided by the Court. Those issues have escaped resolution thus far. Because of the emergence of prison reform litigation based upon "totality of conditions" which is facing many states, these issues are properly before this

Court for issuance of a Writ of Certiorari.

Respectfully submitted,

TANY S. HONG
ATTORNEY GENERAL
State of Hawaii

JAMES DANNERBERG
DEPUTY ATTORNEY GENERAL
Department of the Attorney General
State Capitol
Honolulu, Hawaii 96813

JIM SMITH
ATTORNEY GENERAL
State of Florida

MITCHELL D. FRANKS
ASSISTANT ATTORNEY GENERAL

JAMES A. PETERS
ASSISTANT ATTORNEY GENERAL
Department of Legal Affairs
The Capitol, Suite 1501
Tallahassee, Florida 32301
904/488-1573